



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

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In Reply Refer To:
6840 (CA930)P

EMS TRANSMISSION: 10/20/04
Information Bulletin No. CA-2005-011

To: Field Managers, Bakersfield, Bishop, Barstow, El Centro, Needles, Palm Springs-South Coast, and Ridgecrest

From: State Director

Subject: Proposed Rule to Designate Critical Habitat for the Southwestern Willow Flycatcher
DD: 12/03/04

On October 12, 2004, the Fish and Wildlife Service (FWS) published a notice (*Federal Register* 69:60705-60786) proposing critical habitat for the southwestern willow flycatcher (*Empidonax traillii extimus*). (See Attachment 1.) This proposed rule solicits information on several topics, including the reasons why any areas should or should not be designated as critical habitat and the potential economic impacts such designation may have on affected interests, particularly small entities.

The current critical habitat proposal stems from a legal challenge to the July 1997 final rule designating critical habitat for this species. In response to a lawsuit, the 10th Circuit Court of Appeals set aside designated critical habitat within New Mexico, the only State under that Court's jurisdiction. The FWS then set aside all of the critical habitat that had been designated for this species until a reassessment of the economic effects of designation could be completed.

A total of 376,095 acres have been re-proposed as critical habitat for this species in six States, of which 71,272 acres are in California. Of the California total, 17,876 acres are in Federal ownership. It is not clear from the maps presented in the Federal Register notice how much overlap there is with BLM-administered land in California. A GIS file has been requested from the lead FWS office that will eventually enable us to overlay proposed critical habitat with BLM-administered land.

Please review the proposed rule, and associated maps, and advise CA-930 (Attn: Ed Lorentzen) if you have comments or suggestions regarding the proposed critical habitat boundaries, or any other aspects of the proposed rule. The deadline for submitting comments to FWS is December 13, 2004. Please provide us with your comments, if any, in electronic format by the close of business December 3, 2004. This amount of lead time is needed to coordinate our comments with the other BLM states that manage southwestern willow flycatcher proposed critical habitat.

Now that critical habitat has been proposed for this species, the conference requirements of Section 7(a)(4) of the Endangered Species Act and its implementing regulations at 50 CFR 402.10 are applicable to any BLM actions likely to cause the destruction or adverse modification of proposed critical habitat. Additionally, the guidance in Manual Section 6840.06B1 calls for BLM to confer with the Service "... on any action that is likely to adversely affect a proposed species or proposed critical habitat." Any outstanding requests for formal consultation with the Service involving this species should be updated to include conference on proposed critical habitat.

Questions regarding this proposed rule may be directed to Ed Lorentzen at (916) 978-4646.

Signed by:
James Wesley Abbott
Associate State Director

Authenticated by:
Richard A. Erickson
Records Management

Attachment

- 1 - Proposed rule to designate critical habitat for the southwestern willow flycatcher (85 pp.)

Distribution

AZ-932 (Attn: Ted Cordery)
CO-932 (Attn: Robin Sell)
NM-931 (Attn: Paul Sawyer)
NV-931 (Attn: Erick Campbell)
UT-933 (Attn: Ron Bolander)
CA-610 (Attn: Linda Hansen)
CA-920 (Attn: Leroy Mohorich)
WO-230, MS 204 LS (Attn: Peggy Olwell)